

Remarks

Claims 1-21 have been canceled without prejudice or disclaimer, and new claims 22-44 have been added. Applicants hereby reserve the right to pursue canceled subject matter in subsequently filed continuing applications.

New claims 22-44 have been added in order to claim additional embodiments of the subject matter of the provisionally-elected group. Support for these claims can be found throughout the specification as filed. For example, support for claims 21-44 can be found in the specification at page 53, paragraph 134 to page 55, paragraph 140; and at page 57, paragraph 149 to page 58, paragraph 151.

The title has been amended to reflect the currently claimed subject matter. The specification has been amended to reflect the current status of the parent application, U.S. Patent Application No. 09/097,681.

Accordingly, no new matter has been added and entry of the present amendment and remarks are respectfully solicited.

New claims 22-44 are pending.

The Restriction Requirement

Pursuant to the Office Action mailed June 7, 2005, the Examiner has required an election under 35 U.S.C. § 121 of one of Groups I-IV. The Examiner contends that the inventions are distinct, each from the other.

In response, Applicants provisionally elect, *with traverse*, the invention of Group III, represented by new claims 22-44; drawn to antibodies that specifically bind polypeptides comprising the amino acid sequence of SEQ ID NO:2, for further prosecution. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions should the restriction requirement be made final. Applicants point out that claims 1-21 have been canceled without prejudice or disclaimer, and that new claims 22-44 are directed to subject matter falling within the ambit of Group III, as cast by the Examiner. Applicants further note that new claim 37 is a dependent claim directed to methods of detecting a protein using the claimed antibodies. Should the Examiner decide to restrict claim 37 into a separate group from claims 22 to 36 and 38 to

44, Applicants further provisionally elect the group represented by claims 22 to 36 and 38 to 44. In this event, claim 37 should be rejoined upon the allowance of claim 22 in light of M.P.E.P. § 821.04.

With respect to the Examiner's division of the invention into four groups and the reasons stated therefor, Applicants respectfully disagree and traverse.

Applicants point out that even where patentably distinct inventions appear in a single application, restriction remains improper unless the examiner can show that the search and examination of these groups would entail a "serious burden." *See* M.P.E.P. § 803. In the present situation, although the Examiner has argued that Groups I-IV have acquired a separate status in the art because of their "recognized" divergent subject matter, Applicants nonetheless submit that a search of the claims of any of the groups would also provide useful information for the claims of the other groups. For example, in many if not most publications disclosing a protein, the authors also disclose nucleic acids encoding the protein, and antibodies that specifically bind to that protein. Thus, since the searches for proteins, nucleic acids encoding such proteins, and antibodies that specifically bind such proteins commonly overlap, the combined search and examination of such compositions would not entail a serious burden.

Accordingly, in view of M.P.E.P. § 803, the claims of all of Groups I-IV should be searched and examined together in the present application. Applicants therefore respectfully request that the restriction requirement under 35 U.S.C. § 121 be reconsidered and withdrawn.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144. Additionally, should the Examiner restrict new claims 22 to 44 further, Applicants also retain the right to traverse that restriction under 37 C.F.R. § 1.144.

Conclusion

Entry of the above amendment is respectfully solicited. In view of the foregoing remarks, Applicants believe that this application is now in condition for examination, and an early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the appropriate fee should also be charged to our Deposit Account.

Dated: June 23, 2005

Respectfully submitted,

By

Mark J. Hyman

Registration No.: 46,789
HUMAN GENOME SCIENCES, INC.
14200 Shady Grove Road
Rockville, Maryland 20850
(240) 314-1224

MJP/MJH/KC/lcc